

TITLE 35

NISQUALLY INDIAN TRIBE  
PROBATE CODE

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TITLE 35  
NISQUALLY PROBATE CODE

**CHAPTER I - GENERAL PROVISIONS**

35.01.010 Title

This Title shall be known and may be cited as the Nisqually Probate Code.

**HISTORICAL AND STATUTORY NOTES**

This Title adopted by Tribal Council Resolution \_-2011, dated \_\_\_\_\_, 2011.

35.01.020 Purpose

The purpose of this Title is to provide rules to govern probate proceedings in the Tribal Court. In enacting this Title, the Nisqually Tribe intends to provide a forum in which the estates of Nisqually Indians and other community members may be efficiently and effectively distributed. The Tribe wants to ensure that heirs are not overlooked, that creditors are compensated, and that tribal customs are recognized.

35.01.030 Jurisdiction of the Tribal Court

- (a) The Tribal court shall have jurisdiction to administer in probate the estate of any Nisqually tribal member or other community member who, at the time of his or her death, was domiciled or owned real or personal property situated within the Nisqually reservation. In the absence of clear evidence to the contrary, all Nisqually tribal members are presumed to be domiciled on the Nisqually reservation.
- (b) The Tribal court shall have jurisdiction to administer in probate all real property within the reservation that is owned by a Nisqually tribal member or other community member, to the extent that such property does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.
- (c) The Tribal court shall have jurisdiction to administer in probate the personal property of Nisqually tribal members and other community members domiciled within the Nisqually reservation. Such personal property is presumed located on the reservation.
- (d) The court shall have the broadest possible authority to execute its duties and responsibilities under this Title.

35.01.040 Severability

If any provision of this ordinance or its application to any person or circumstance is determined by court review to be invalid, such determination does not render such

provision inapplicable to other persons or circumstances nor invalidate any other provision of this ordinance.

35.01.050 Sovereign Immunity

The sovereign immunity of the Nisqually Indian Tribe shall in no manner be waived by this ordinance.

35.01.060 Repealer

This code is to be interpreted to supersede and replace all prior probate codes and laws and the Nisqually Indian Tribe.

35.01.070 Definitions

(a) Beneficiary – means any person or entity who is to receive money, property or other assets as the result of a will, trust, insurance policy or other instrument in which there is a distribution.

(b) Child – An adopted child or a biological child for whom paternity has been acknowledged or established.

(c) Claimant - Any person or entity who asserts a claim against the estate of a deceased person.

(d) Claim – Any debt or other liability incurred by the decedent which is outstanding at the time of his or her death or any liability incurred by the decedent’s estate after his or her death, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes.

(e) Community Member - Any Nisqually tribal member, and any other person residing within the Nisqually reservation who is Native American and/or related by blood or marriage to a Nisqually tribal member.

(f) Community Property - All property in which a husband and wife have received an undivided interest and any property acquired by either spouse during the marriage other than by gift, inheritance, bequest or devise.

(g) Decedent – A deceased person whose estate is being subject to probate.

(h) Degree of Kinship - For the purposes of this title, degree of kinship shall be computed by counting upward from the decedent to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

- (i) Devise – when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.
- (j) Estate – All property in which the decedent had an interest at the time of his or death.
- (k) Heirs – Those persons, including the surviving spouse, who are entitled under the rules of intestate succession to the real and personal property of a decedent.
- (l) Interested Person – Any heir, beneficiary, creditor, or other person having a property right in or claim against the estate of a decedent. It also includes persons having priority for appointment as personal representative.
- (m) Intestate Estate – Any part of the estate of a decedent not effectively disposed of by his or her will.
- (n) Issue - All lineal descendants of the ancestor, including lawfully adopted children. Children who have been cared for or adopted by custom shall not be considered to be issue.
- (o) Non-probate Asset - An asset that passes on the person's death under a written instrument or arrangement other than the person's will. "Non-probate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person.
- (p) Personal Representative – The person appointed by the court to carry out the duties described in this Title. The term “personal representative” shall include an executor, administrator, special administrator, guardian, limited guardian or special representative.
- (q) Property – Real property, personal property, and any other thing of value which may be passed to another person through inheritance, or any interest therein.
- (r) Representation – A method of determining distribution in which the takers are in unequal degrees of kinship with respect to the decedent. Distribution “by representation” is accomplished as follows: the property is divided into as many equal shares as there are descendants in the generation nearest to the designated ancestor and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share and the share of



each deceased descendant in the same generation is divided among his or her descendants in the same manner.

(s) Reservation or “Nisqually Reservation” - All lands over which the Nisqually Indian Tribe may legally assert jurisdiction limited only by federal law and the Constitution of the Nisqually Tribe.

(t) Separate Property - All property owned or acquired by a spouse which is not community property.

(u) Spouse – A party to a marriage recognized by any jurisdiction, including the Nisqually Tribe or a party to a same-sex domestic partnership registered in any State. The term “spouse” shall not include a party to a common law marriage that has not been legally recognized.

(v) Trust or Restricted Property – Any property, title to which is held in trust or restricted fee status by the United States for the benefit of a member of a federally recognized tribe.

(w) Will – Any instrument validly executed as required by this Title that disposes of an individual’s estate at death, including a codicil and any testamentary instrument which merely appoints an personal representative or revokes or revises another will.

## CHAPTER II - WILLS

### 35.02.010 Who May Make a Will

Any person of sound mind who has attained the age of eighteen years may, by last will, devise all his or her estate, both real and personal.

### 35.02.020 Will Formalities

(a) All wills must be in writing.

(b) All wills must be signed by the individual making the will in front of two competent and disinterested witnesses. If the individual is unable to sign, he or she may direct a witness to sign for him or her.

### 35.02.030 Who May Witness - Effect of Witness by Beneficiary

(a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will is not invalid because the will is signed by an interested witness; provided that all beneficial devises made in any will to a witness are void unless there are two other competent witnesses to the will.

(c) If a witness to whom any beneficial devise is void under subsection (b) would have been entitled to any share of the estate if the testator had died intestate, such witness shall receive so much of the share as would be distributed to him or her under intestate succession, not exceeding the devise made to him or her in the will.

#### 35.02.040 Incorporation by Reference

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

#### 35.02.050 Separate Writing Identifying Disposition of Tangible Personal Property

(a) A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.

(b) To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the beneficiaries with reasonable certainty.

(c) The writing may be:

- (i) Referred to as one to be in existence at the time of the testator's death;
- (ii) Prepared before or after the execution of the will;
- (iii) Altered by the testator after its preparation; or
- (iv) A writing which has no significance apart from its effect upon the dispositions made by the will.

#### 35.02.060 Effect of Divorce After Will is Made

The divorce of an individual after making a will voids all provisions of the will which are in favor of the ex-spouse.

#### 35.02.070 Omitted Child Born or Adopted After Execution of Will

(a) If a will fails to name or provide for a child of the decedent who is born or adopted after the will was executed, and who survives the decedent, the omitted child shall receive a share in the estate equal to that which would have been received if the individual had died intestate. All other gifts in the will are reduced proportionately to provide for this share.

(b) In determining whether an omitted child has been named or provided for, the following rules apply:

(i) A child identified in a will by name is considered named whether identified as a child or in any other manner.

(ii) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.

(c) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(d) The rule stated in subsection (a) shall not apply if the court determines upon clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. The court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

#### 35.02.080 Omitted Spouse Married After Execution of Will

(a) If a will fails to name or provide for a spouse of the decedent whom the decedent marries, or enters into a domestic partnership with, after the will was executed, and who survives the decedent, the omitted spouse shall receive a share in the estate equal to that which would have been received if the individual had died intestate unless it appears from the will or other clear and convincing evidence that the omission was intentional. All other gifts in the will are reduced proportionately to provide for this share.

(b) In determining whether an omitted spouse has been named or provided for, the following rules apply:

(i) A spouse identified in a will by name is considered named whether identified as a spouse or in any other manner.

(ii) A reference in a will to the decedent's future spouse or spouses or future domestic partner or partners, or words of similar import, constitutes a naming of a spouse whom the decedent later marries or with whom the decedent enters into a domestic partnership. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse who falls within the class.

(c) A nominal interest in an estate does not constitute a provision for a spouse receiving the interest.

(d) The rule stated in subsection (a) shall not apply if the court determines upon clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. The court may consider, among other things, the spouse's

property interests under community property law, the various elements of the decedent's dispositive scheme, a marriage or domestic partnership settlement, or other provisions for the spouse outside the decedent's will.

35.02.090 Lapsed Gift

If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

35.02.100 Estate for Life – Remainders

If any person, by last will, or by the operation of tribal law, shall devise any real estate to any person for the term of such person's life, such devise vests in the beneficiary an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator.

35.02.110 Will to Operate On After-Acquired Property

Any estate, right, or interest in property acquired by the testator after the making of his will shall pass as if title thereto was vested in him at the time of making the will, unless the language of the will makes clear the testator's intention was otherwise.

35.02.120 Intent of Testator Controlling

All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator in all matters brought before them shall control unless prohibited by law.

35.02.130 Will Revocation

An individual may revoke his or her will in either of the following ways:

- (a) By burning, tearing, canceling, obliterating, or destroying it with the intent and for the purpose of revoking it, or by having another person perform one of the above acts in his or her presence and at his or her direction. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses.
- (b) By executing a later will, or other document executed with the same formalities, which revokes the prior will, or a part thereof, expressly or by inconsistency.
- (c) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent.

35.02.140 Revival

If after making any will, the testator shall duly make and execute a second will, the revocation of the second will shall not revive the first will. If the subsequent will is determined to be invalid, the first will shall not be deemed revoked.

35.02.150 Duty to Present Will for Probate

Every custodian of a will shall deliver the same to the Tribal Court within 30 days after receipt of information that the maker thereof is deceased. Any such custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.

**CHAPTER III – DESCENT AND DISTRIBUTION FOR NON-TRUST PROPERTY**

35.03.010 Distribution Pursuant to Will

Except as otherwise provided in this Title, the Tribal Court shall distribute the estate of a decedent according to the terms of the decedent's will that has been admitted to probate.

35.03.020 Deceased Beneficiary

Unless the will provides otherwise, a beneficiary who fails to survive the individual by at least 30 days may not take any property under a will. However, if such beneficiary is a lineal descendant, parent, brother or sister of the deceased individual and such beneficiary left surviving descendants, then those descendants shall take in equal portions what their parent would have taken had their parent survived.

35.03.030 Intestate Succession Rules

The net estate of a person dying intestate shall be distributed as follows:

- (a) The surviving spouse shall receive the following share:
  - (i) all of the decedent's share of the net community estate; and
  - (ii) one-half of the net separate estate if the decedent is survived by issue; or three quarters of the net separate estate if there is no surviving issue, but the decedent is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or all of the net separate estate, if there is no surviving issue nor parent nor issue of the parent.
  
- (b) The share of the net estate not distributed to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:
  - (i) To the issue of the decedent; if they are all in the same degree of kinship to the decedent, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation;

- (ii) If the decedent not be survived by issue, then to the decedent's parent or parents who survive the decedent, in equal shares;
- (iii) If the decedent not be survived by issue or by either parent, then to those issue of the parent or parents who survive the decedent; if they are all in the same degree of kinship to the decedent, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation;
- (iv) If the decedent not be survived by issue or by either parent, or by any issue of the parent or parents who survive the decedent, then to the grandparent or grandparents who survive the decedent; if both maternal and paternal grandparents survive the decedent, the maternal grandparent or grandparents shall take one-half and the paternal grandparents or grandparents shall take one-half;
- (v) If the decedent not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the decedent; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the decedent, or, if some be unequal degree, then those of more remote degree shall take by representation.

(e) If the decedent leaves no surviving relatives, and there are no heirs to take the estate, the net intestate estate shall escheat to the Nisqually Tribe.

35.03.040 Advancements

- (a) An estate, real or personal, given by the decedent in his or her lifetime as an advancement to any heir or beneficiary is part of the estate of the decedent for the purpose of division and distribution thereof, and must be taken by such heir or beneficiary towards his or her share of the estate of the decedent.
- (b) If the amount of such advancement exceeds the share of the heir or beneficiary receiving the same, he or she must be excluded from any further portion in the division and distribution, but he or she shall not be required to refund any part of the advancement, and if the advancement received is less than his or her share, he or she is entitled to so much more as will give the person his or her full share of the estate.
- (c) All gifts or grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the beneficiary.
- (d) If the value of an estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

35.03.050 Inheritance by Child

For the purposes of inheritance, the effect and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

35.03.060 Effect of Adoption

For purposes of intestate succession, the relationship between an adopted person and his adoptive parents, their descendants and kindred shall be the same to all legal intents and purposes as if the adopted person had been born to his adoptive parents and his relationship with his natural parents, their descendent and kindred shall be the same to all legal intents and purposes as if he had not been born to his natural parents.

35.03.070 Disclaimer

Any heir or beneficiary may disclaim property given to him or her under an individual's will or by intestate succession. If the property so disclaimed was bequeathed to the individual by means of a will, it shall pass as if the bequest to the beneficiary had not been made. If the disclaimed property was to pass through intestate succession, it shall pass as if the individual had predeceased the decedent.

35.03.080 Escheat for Want of Heirs

Whenever any person dies, leaving property subject to the jurisdiction of the Nisqually Tribe, and not being survived by any person entitled to the same under the laws of the Nisqually Tribe, such property shall be designated as escheat property and shall pass to the Nisqually Tribe.

**CHAPTER IV - FAMILY AWARDS**

35.04.010 Purpose of Chapter

(a) This chapter is enacted in the interest of fairness and for the protection and benefit of a decedent's surviving spouse and/or minor children. This chapter is intended to provide for an award from a decedent's estate to the decedent's spouse and/or minor children, even if the award is contrary to the provisions of the decedent's will, intestacy laws, community property laws and/or the rights of creditors.

(b) Nothing in this chapter is intended to affect the distribution of property held in trust or restricted status for the benefit of any tribal member or other Native American.

#### 35.04.020 Who May Petition for a Family Award

- (a) A surviving spouse may petition for an award from the property of his or her deceased spouse.
- (b) If the decedent is survived by children who are not also the children of the surviving spouse, and the spouse has petitioned for a family award, a representative of any such child may bring a petition requesting that the court divide the award between the surviving spouse and all or any of such children.
- (c) If there is no surviving spouse, a representative of decedent's minor children may petition for an award on their behalf.

#### 35.04.030 Timing for Filing the Petition

The petition for an award must be filed before the earliest of:

- (a) Six months after a personal representative has been appointed;
- (b) Any probate of the decedent's estate in tribal court has terminated;
- (c) Six years from the decedent's death.

#### 35.04.040 Contents of Petition

A petition for a family award must:

- (a) State the relationship of the Petitioner to the Decedent;
- (b) Identify the decedent's spouse;
- (c) Identify any children of the decedent that are not also the children of the surviving spouse;
- (d) If the decedent is not survived by a spouse, identify all minor children of the decedent;
- (e) Set forth facts to establish that the petitioner is entitled to petition for an award;
- (f) Describe the nature and value of the decedent's estate;
- (g) State the nature and value of those assets that the petitioner is seeking to have included in the family award;
- (h) Describe what provisions have been made for the payment of funeral expenses, expenses of last illness, and expenses of probate administration and state that a family award will not interfere with the payment of those claims;



(i) If the petitioner is seeking an increase in the basic award, the petition should set forth any facts the petitioner wants the Court to consider in this regard.

35.04.050 Notice of Hearing

Notice of the Hearing on the Petition and a copy of the Petition, must be provided by certified mail, return receipt requested, to the following persons at least twenty (20) days prior to the Hearing:

- (a) The decedent's spouse, if living;
- (b) The parent or guardian of any of the decedent's minor children;
- (c) The personal representative, if one has been appointed;
- (d) Any creditors, heirs, or other persons whose identities are reasonably discoverable by the petitioner and whose claims or interests might be affected by a family award.

35.04.060 Hearing on Petition

At the hearing on the petition, the court shall determine whether the petitioner is entitled to a family award. If the Court finds that the petitioner is entitled to a family award, the Court shall order that certain assets from the decedent's estate be awarded to the petitioner and that the assets awarded to the petitioner shall be exempt from the claims of creditors. In its order, the court shall designate the assets that are so exempt.

35.04.070 Probate Proceedings not Required

A family award may be made whether or not probate proceedings have been commenced in the Tribal Court.

35.04.080 Amount of Basic Award

- (a) The amount of the basic award is \$75,000 worth of assets. If an award is divided between a surviving spouse and the decedent's children who are not the children of the surviving spouse, the aggregate amount awarded to all the claimants under this section shall be a total of \$75,000 worth of assets.
- (b) The award may be made from either the community or the separate property of the decedent. Unless otherwise ordered by the court, the probate and non-probate assets of the decedent abate in accordance with section 35.10.100.
- (c) The award shall not include any property held in trust or restricted status for the benefit of the decedent.

(d) In determining which assets of the decedent's shall be included in the award, the court shall protect the interests of the decedent's other heirs in specific property, to the extent practicable.

(e) If the total amount of the decedent's estate is less than \$75,000, the court may order that a portion of the spouse's community property interest also be included in the award to the spouse, provided that the total award does not exceed \$75,000.

#### 35.04.090 Increase in Basic Award

(a) The Court may increase the basic award if the claimant's present and reasonably anticipated future needs during probate administration with respect to basic maintenance and support will not be provided for from other resources, and that the award would not be inconsistent with the decedent's intentions.

(b) Any award in excess of the basic award is not immune from any lien for costs of medical expenses.

#### 35.04.100 Decrease in Basic Award

(a) The Court may decrease the amount of the basic award in the exercise of its discretion if the recipient will receive other probate or non-probate property, including insurance, by reason of the death of the decedent. In such case, the award may be decreased by no more than the property that will be received.

(b) The Court may also decrease the award to the surviving spouse if:

(i) The decedent is survived by children who are not the children of the surviving spouse, and the award would decrease the amount otherwise distributable to such children; or

(ii) The award would decrease the amount otherwise distributable to any of decedent's minor children.

(c) The court may decrease or deny an award to adult children of the decedent if:

(i) It is clear from the decedent's will or other evidence that such an award would be inconsistent with the decedent's wishes;

(ii) The award would decrease the amount otherwise distributable to any of decedent's minor children; or

(iii) The decedent died intestate and the award would provide more to the adult children than they would have received under the laws of intestacy.

#### 35.04.110 Conditions of Award

The court may not make an award unless the court finds that the funeral expenses, expenses of last illness, and expenses of estate administration have been paid or provided for.

35.04.120 Priority of Award

(a) Except as provided in subsection (b), a family award takes priority over all gifts, taxes, and claims in the estate, including debts, judgments, and judgment liens of the decedent and the surviving spouse in existence at the time of the decedent's death.

(b) The family award does not take priority over funeral expenses, expenses of last illness, and expenses of probate administration.

35.04.130 Award of Property Subject to Contract or Encumbrance

An award of property either being purchased on contract or subject to encumbrance must be valued net of the balance due on the contract and the amount of the encumbrance. The property awarded will continue to be subject to any such contract or encumbrance.

35.04.140 Immunity of Award from Debts and Claims of Creditors

(a) Except as provided in section 35.04.130, property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse existing at the time of death.

(b) Both the decedent's and the surviving spouse's interests in any community property awarded to the spouse or domestic partner under this chapter are immune from the claims of creditors.

35.04.150 Exhaustion of Estate

If an award provided by this Chapter will exhaust the estate, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, if one has been appointed, and exonerate the personal representative's bond, if any.

**CHAPTER V - DISPOSITION OF PERSONAL PROPERTY WITHOUT PROBATE**

35.05.010 Purpose

The purpose of this chapter is to provide a means for small estates to be distributed without a lengthy probate process. Nothing in this chapter is intended to affect the distribution of property held in trust or restricted status for a tribal member or other Native American.

35.05.020 Definitions

As used in this chapter, the following terms shall have the meanings indicated.

- (a) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.
- (b) "Successor" and "successors" shall mean:
  - (i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or
  - (ii) The surviving spouse or surviving domestic partner of the decedent to the extent that the surviving spouse or surviving domestic partner is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse or said domestic partner and the decedent; and/or
  - (iii) This tribe, in the case of escheat property.

Any person, other than the Tribe, who claims to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, shall be excluded from the definition of "successor".

- (c) "Person" shall mean any individual or organization, specifically including but not limited to a bank, credit union, brokerage firm or stock transfer agent, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

35.05.030 Transfer of Personal Property or Debts by Affidavit and Proof of Death

- (a) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of section 35.05.040.

- (b) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of section 35.05.040.

- (c) Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license

registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of section 35.05.040.

35.05.040 Content of Affidavit

An affidavit which is to be made pursuant to section 35.05.030 shall state:

- (a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in 35.05.020(b);
- (b) That the decedent was a resident of the Nisqually Indian Reservation, in the state of Washington on the date of his or her death;
- (c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars (\$100,000);
- (d) That forty days have elapsed since the death of the decedent;
- (e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
- (f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;
- (g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;
- (h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and
- (i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

**NOTE**

The provisions of this chapter mirror those of the State of Washington and, it is intended that the affidavit described in section 35.05.040 may also be presented to persons holding the decedent's personal property or owing debts to the decedent on non-tribal lands. Any person wishing to use said affidavit to obtain property in the State of Washington is required under Washington law to mail a copy of the affidavit, including the decedent's social security number, to: Office of Financial Recovery, Washington Department of Social and Health Services. P.O. Box 9501 Olympia, WA 98507-9501.

35.05.050 Discharge and Release of Transferor

(a) The person paying, delivering, transferring, or issuing personal property pursuant to section 35.05.030 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any statement made in the affidavit, or into the payment of any estate tax liability.

(b) An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to section 35.05.030 until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed.

35.05.060 Refusal to Pay or Deliver

(a) If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

(b) If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment over to the person entitled thereto.

35.05.070 Accountability of Person Receiving Property

Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to this Chapter is answerable and accountable therefore to any personal representative of the estate of the decedent or to any other person having a superior right thereto.

**CHAPTER VI - SUMMARY PROBATE OF EXEMPT ESTATES**

35.06.010 Exempt Estates

An estate having an appraised value which does not exceed \$125,000 and which is to be inherited by a surviving spouse and/or children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provide in this section. Nothing in this exemption shall be interpreted to affect the claims of secured creditors.

35.06.020 Notice of Hearing to Determine Whether the Estate is an Exempt Estate

(a) Upon petition of the Personal Representative, the Court shall enter an order reciting that it appears, from the inventory and appraisal filed with the Court, that the appraised value of the whole estate does not exceed \$125,000 and that such estate is to be inherited by the surviving spouse and/or children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any there be, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or children of the decedent.

(b) Notice of such hearing shall be given by certified mail, return receipt requested and by regular mail to all persons known to the Personal Representative to be an heir or devisee of the decedent. Such notice shall be posted or mailed not less than ten days before the time set for such hearing. On or before the time set for such hearings, the Executor shall file his affidavit with the Court indicating compliance with this requirement of giving notice.

35.06.030 Hearing to Determine Whether the Estate is an Exempt Estate

If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Personal Representative to distribute such estate to the surviving spouse and/or the children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled thereto and filing receipts therefore, the estate shall be closed.

**CHAPTER VII – XIII PROBATE PROCEEDINGS**

35.07 INITIATING PROBATE PROCEEDINGS

35.07.010 Marital Property

Upon the death of either spouse, one-half share of the community property shall be confirmed as the property of the surviving spouse and the other half shall be subject to testamentary disposition or intestate distribution. The whole of the community property shall be administered for the purpose of collecting community assets and paying community debts.

35.07.020 Petition to Probate Estate

Any person having an interest in the administration of an estate which is subject to the jurisdiction of the Tribal Court may file a written petition with the Tribal Court requesting that such estate be administered in probate. Such petition shall set forth:

- (a) The name, date of death and resident address of the decedent at the time of his or death;
- (b) A copy of the death certificate or other adequate proof of death;
- (c) Whether the decedent was a Nisqually Indian or other community member who, at the time of his or her death, was domiciled or owned real or personal property situated within the Nisqually Indian Reservation;
- (d) The names and addresses of the decedent's spouse and children so far as such information is known to the petitioner;
- (e) The names and addresses of the decedent's other heirs and beneficiaries so far as such information is known to the petitioner;
- (f) Whether the decedent left a will so far as is known to the petitioner, and if so, whether it is attached to the petition or has been presented to the Court for admission to probate;
- (g) The name, age and resident address of the person nominated in the decedent's will, if any, to administer the decedent's estate and, if such person desires to be appointed as personal representative, a sworn statement by such person that he is willing to serve as personal representative of the decedent's estate;
- (h) If no person was named in the decedent's will to administer the estate, or if the decedent died intestate, the name, age and address of a person willing to act as the personal representative;
- (i) A general description of the decedent's estate subject to probate in the Nisqually Tribal Court, and a general description of the of those portions of the decedent's estate, if any, that are not subject to probate in the tribal court, including, but not limited to any interests in trust or restricted property;
- (j) A statement as to whether a bond should be required of the personal representative, and if so, the amount of the bond requested;
- (k) A statement as to whether the decedent's will granted any powers to the personal representative beyond those enumerated in section 35.09.060.
- (l) A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct.

35.07.030 Notice of Hearing

Upon receiving a Petition to Probate an Estate, the Clerk of Court shall give notice of the date, time, and place of the hearing, and the business to be conducted.

TITLE 35  
PROBATE



#### 35.07.040 Service of Notice on Interested Parties

- (a) A copy of the notice of hearing shall be served at least twenty (20) days before the date of the hearing, either personally, or by certified mail, return receipt requested, with an additional copy sent by regular mail, on each known presumptive heir, beneficiary, or transferee. Proof of service of notice shall be filed by the Clerk of Court.
- (b) In formal proceedings involving estates of decedents, minors, protected person, incapacitated persons, unborn or unascertained persons are bound by orders of the Court so long as notice is properly given to:
- (i) a parent of a minor; or
  - (iii) a guardian or other legal representative.

#### 35.08 WILL ADMISSION AND APPROVAL

##### 35.08.010 Proving and Admitting Will

- (a) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Court. Such will may be proven and admitted to probate by filing the affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will.
- (b) If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

##### 35.08.020 Contest of Approval or Rejection of Will

- (a) At any time within ninety (90) days after a will has been admitted or rejected by the Court, any person having an interest in the decedent's estate may contest the admission or rejection of such will. In the event of such contest, the Court shall take no further action with respect to the probate of the estate, but shall set a day and hour for a hearing to determine the validity of such will.
- (b) Notice of the hearing on the will contest shall be provided to the personal representative of the decedent's estate, all heirs at law, beneficiaries named in the will or to their guardians if any of them are minors or their personal representatives if any of them are dead.
- (c) All relevant evidence shall be presented at such hearing concerning the decedent's capacity to execute a valid will and the circumstances surrounding its execution. Issues which may be considered by the Court are: (i) the competency of the decedent to make the will; (ii) whether the will resulted from duress, menace, fraud, or undue influence;

(iii) whether the will is legal in form and properly executed; and (iv) any other questions substantially affecting the validity of the will.

(d) Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

#### 35.08.030 Orders Following Hearing on Contest

If a petitioner proves with clear and convincing evidence that the previous order of the court accepting or rejecting a will, in whole or in part, or a finding that the decedent died intestate was in error, the court shall issue a new order reflecting the evidentiary findings made following the contest proceedings. The new order may accept or reject a will, in whole or in part, may find that the decedent dies intestate, and may amend the letters of appointment of the personal representative for the estate.

### 35.09 ESTATE ADMINISTRATION

#### 35.09.010 Order to Probate Estate

(a) Upon finding that the decedent was a Nisqually Indian or other community member who, at the time of his or her death, was domiciled or owned real or personal property situated within the Nisqually Indian Reservation; that the decedent left an estate subject to the jurisdiction of the court; and that it is necessary to probate such estate, the court shall enter an order directing that the estate be probated.

(b) The order shall state whether or not a will of the decedent has been admitted to probate and if so, the order shall state that any person desiring to contest the validity of such will must do so within ninety (90) days following the date of the order to probate the estate.

(c) The order shall also appoint a personal representative to administer the decedent's estate.

#### 35.09.020 Appointment of Personal Representative

(a) Upon ordering an estate to be probated, the court shall appoint a personal representative to administer the estate according to this Title. The person nominated by the decedent's will to administer the estate shall be appointed as the personal representative, provided such person is qualified and willing to serve in such capacity.

(b) If no person was named in the decedent's will to administer the estate, or if the decedent died intestate, the person nominated in the petition to probate may be appointed by the court. The court shall take into consideration any objections by the interested parties to the person so nominated.

(c) If more than one person is qualified and willing to serve as personal representative, priorities for such appointment shall be as follows:

- (i) The person nominated in the decedent's will;
- (ii) The surviving spouse or his or her designee;
- (iii) A lineal descendant;
- (iv) A parent;
- (v) A collateral descendant;
- (vi) Others.

#### 35.09.030 Qualifications of Personal Representative

(a) Any person shall be qualified for appointment as personal representative if he or she is over 21 years of age, resides on the reservation, or in a neighboring county, and is otherwise competent to perform the duties required of a personal representative.

(b) The following persons are not qualified to act as personal representatives: corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude.

#### 35.09.040 Spousal Administration of Community Property

(a) A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court finds such spouse to be otherwise qualified; but if such surviving spouse does not make application for such appointment within thirty days after receiving a notice required by section (b), he or she shall be considered as having waived his or her right to administer upon such community property.

(b) If any person, other than the surviving spouse make application for letters testamentary on the decedent's community property, then the court, before making any such appointment, shall require notice of such application to be given to the said surviving spouse, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property.

#### 35.09.050 Bond Requirement

(a) As a condition to his or her appointment, a bond may be required by the Court except that no bond shall be required where the decedent's will directs that the personal representative shall serve without bond.

(b) A bond shall not be required of a spouse who is administering community property pursuant to section 35.09.040.

35.09.060 Duties and Powers of Personal Representative

The personal representative appointed by the Court shall have the following duties and powers during the administration of the estate and until discharged by the Court:

- (a) To take possession and control of all the decedent’s assets subject to the probate jurisdiction of the court, and to preserve such assets for the benefit of the estate, heirs and beneficiaries;
- (b) To give all notices to family members, heirs, beneficiaries, government agencies or creditors as required or allowed by this Title;
- (c) To act in a fiduciary capacity in the name of the estate, subject to applicable orders of the court, to settle any claim against the estate, collect any debts owed to the estate, and initiate or defend any litigation involving the estate;
- (d) To administer, in a fiduciary capacity, the affairs of the estate to ensure that the estate is preserved and distributed in accordance with the decedent’s directions expressed in his or her last will and testament, or in the absence of such a will, in accordance with the rules of intestate succession set out in this Title;
- (e) To exercise any power granted by the decedent’s last will and testament or by order of the court; and
- (f) To avoid any conflict of interest between his personal interests and the interests of the estate by always placing the interests of the estate ahead of his personal interest.
- (g) The personal representative shall serve without bond, unless a bond is required by the court, or by the terms of decedent’s will.

35.09.070 Letters of Administration

- (a) Following the conclusion of the hearing and order initiating probate the court shall issue Letters of Administration conferring the powers and duties of the Personal Representative on the petitioner or another person. The term “Letters of Administration” shall apply to the authority granted to a Personal Representative under this Title, regardless of whether decedent died testate or intestate.
- (b) Letters of Administration shall be signed by the court under the seal of the court, and shall be substantially in the following form:

Whereas (decedent) late of (address) on or about the . . . . day of . . . . .  
A.D., . . . died leaving at the time of his death, property in the State of  
Washington subject to the administration under the jurisdiction of the  
Nisqually Tribal Court:

Now, therefore, know all persons by these presents, that this court hereby appoints . . . . . administrator of said estate, and whereas said administrator has duly qualified, the court hereby authorizes him to administer the estate according to law.

Witness my hand and the seal of said court this . . . . day of . . . . . 20\_\_.

35.09.080 Oath of Personal Representative

Before Letters of Administration are issued, the appointed personal representative must take and subscribe an oath, before the clerk of the court or some other person authorized to administer oaths, that the duties and responsibilities as personal representative will be performed according to law. The oath must be filed with the court.

35.09.090 Notice of Appointment as Personal Representative

(a) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir and beneficiary of the estate and each beneficiary or transferee of a non-probate asset of the decedent whose names and addresses are known to him or her.

(b) Proof of such mailing or service shall be made by affidavit or declaration under penalty of perjury and filed with the court.

35.09.100 Successor Personal Representative

If a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, successor Letters of Administration shall be granted to a person to whom the letters would have been granted if the original letters had not been obtained, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise.

35.09.110 Inventory and Appraisement

(a) Within three months after appointment, unless a longer time shall be granted by the court, the personal representative shall make and verify by affidavit a true inventory and appraisement of all of the property of the estate passing under the will or by laws of intestacy and which shall have come to the personal representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges on the item. Such property shall be classified as follows:

- (i) Real property, by legal description;

- (ii) Stocks and bonds;
- (iii) Mortgages, notes, and other written evidences of debt;
- (iv) Bank accounts and money;
- (v) Furniture and household goods;
- (vi) All other personal property accurately identified, including the decedent's non-probate assets, and proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative.

(b) The inventory and appraisal shall be filed with the tribal court and notice of its filing shall be served on any heir, beneficiary, unpaid creditor who has filed a claim, or beneficiary of a non-probate asset.

(c) The personal representative shall have the duty to amend the inventory and appraisal within 30 days of acquiring knowledge of any additional property of the estate. Notice of the amendment shall be served as notice of the original inventory was served.

#### 35.09.120 Cancellation of Letters of Administration

(a) When any person to whom Letters of Administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any felony or of a misdemeanor involving moral turpitude, the court shall revoke his or her letters.

(b) The court may also discharge a personal representative for failure, neglect or improper performance of his duties upon good cause shown.

(c) If after letters of administration are granted, a will of the deceased is found and probate thereof be granted, the letters may also be revoked or amended.

### 35.10 CLAIMS AGAINST THE ESTATE

#### 35.10.010 Duty of Personal Representative to Ascertain Creditors

The personal representative has a duty to exercise reasonable diligence to promptly ascertain the creditors of the decedent. A personal representative is deemed to have exercised reasonable diligence upon conducting a review of the decedent's correspondence, including correspondence received after death, and financial records including personal financial statements, loan documents, checkbooks, bank statements and income tax returns that are in the possession of or reasonably available to the personal representative.

35.10.020 Notice to Creditors

- (a) The personal representative shall promptly give notice to the creditors of the decedent and to the Nisqually Tribe's Chief Financial Officer to present their claims against the decedent's estate.
- (b) The notice to creditors shall contain the following:
  - (i) The name, date of death, and resident address of the decedent at the time of his death;
  - (ii) The date upon which the notice was first posted;
  - (iii) That all persons having claims against the estate are required to present such claims in writing, with proper vouchers, to the personal representative, at a stated address, within 90 days after the date upon which such notice was first posted.
  - (iv) That failure to present the claim, along with proper documentation, within the 90 day period shall bar that claim.
- (c) Notice shall be given by certified mail, return receipt requested, to all creditors known to the personal representative and by publishing the same in a newspaper of general circulation in the area once a week for three consecutive weeks.
- (d) Creditors who are reasonably ascertainable to the personal representative and who are not provided with actual notice within 60 days of the date of first publication of the notice, shall have thirty days from the date of receipt of actual notice to present a claim. When providing notice to these creditors, the personal representative shall inform them of this extension of time.
- (e) After the time period for filing a claim has passed, the personal representative shall file with the Court a verified affidavit showing that he or she has conducted a reasonable review to ascertain creditors and has fully complied with this requirement of giving this notice.

35.10.030 Claims Covered by Insurance

The time limitations for presenting claims under this Title do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within sixty days of the date of first publication of the notice to creditors, but the amount of recovery on any claim not so presented cannot exceed the amount of the insurance. Claims that are covered by insurance do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or non-probate assets, nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate. This section does not serve to extend any otherwise relevant statutes of limitations.

#### 35.10.040 Form of Claim and Manner of Presentation

- (a) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:
- (i) The name and address of the claimant;
  - (ii) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
  - (iii) A statement of the facts or circumstances constituting the basis of the claim, attaching any documents evidencing the claim;
  - (iv) The amount of the claim; and
  - (v) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.
- (b) A claim does not need to be supported by affidavit.
- (c) A claim must be presented within ninety days of the date of first publication of the notice required by 35.10.020 by: (i) Serving on or mailing to, by regular first class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (ii) filing the original of the signed claim with the court. A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

#### 35.10.050 Allowance or Rejection of Claims

- (a) A claim not presented to the personal representative within 90 days after the notice to creditors was first posted is barred.
- (b) All claims presented to the personal representative shall be examined, dated and endorsed with the words "examined and allowed" if the personal representative is satisfied that the claim is just, or endorsed with the words "examined and rejected," if the personal representative is not so satisfied. If a claim is allowed, it shall be paid in due course of administration. If a claim is rejected, the personal representative shall file notice that the claim has been rejected with the Tribal Court and promptly serve a true copy of such notice of rejection by certified mail, return receipt requested, upon the claimant.

#### 35.10.060 Hearing on Rejected Claim

Any claimant whose claim has been rejected may request a hearing before the Tribal Court concerning the rejection of his claim by filing a petition requesting such hearing within 30 days of receipt of the notice. The Tribal Court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected. If no such petition is filed within the said 30-day period, the claim shall thereafter be of no validity and shall be barred.



35.10.070 Judgments Against Decedent

If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a creditor's claim as provided in 35.10.040.

35.10.080 Secured Claims

If a creditor's claim is secured by any property of the decedent, this Chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in 35.10.040.

35.10.090 Order of Payment of Debts

After payment of costs of administration the debts of the estate shall be paid in the following order:

- (a) Funeral expenses in such amount as the court shall order, including a reasonable amount for the cost of a monument;
- (b) Expenses of the last sickness, in such amount as the court shall order.
- (c) Wages due for labor performed within sixty days immediately preceding the death of decedent.
- (d) Taxes, or any debts or fees owing to the Nisqually Tribe.
- (e) Debts having preference by the laws of the United States.
- (f) Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.
- (g) All other demands against the estate.

35.10.100 Abatement

- (a) Except as provided in subsection (b) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:
  - (i) Intestate property;
  - (ii) Residuary gifts;
  - (iii) General gifts;
  - (iv) Specific gifts.
- (b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement

stated in subsection (a), a gift abates as may be found necessary to give effect to the intention of the testator. The personal representative may petition the court for an order requiring adjustments in, or contributions from, interests in the estate assets as necessary to give effect to the intent of the testator.

#### 35.10.110 Contribution Among Beneficiaries and Heirs

When any testator in his last will shall give any personal property or real estate to any person and the same shall be taken in execution for the payment of the testator's debts, then all the other beneficiaries, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

#### 35.10.120 Liability of Beneficiary of Non-Probate Asset

(a) A beneficiary of a non-probate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset.

(b) The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, and the asset's fair share of expenses of administration.

(c) Before making demand that a beneficiary of a non-probate asset account to the personal representative, the personal representative shall give notice to the beneficiary that the beneficiary is liable to account under this section.

### 35.11 SALE OF PROPERTY

#### 35.11.010 Court Approval Required

Except as provided in 35.11.040, no sale of any property of an estate is valid unless made pursuant to an order of the Court.

#### 35.11.020 Sale of Personal Property

After filing the inventory and appraisal, the personal representative may petition the Court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims if any against the estate, and for the purpose of distribution. If, in the Court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold. If any such personal property has been specifically devised, it may be exempt from the operation of the Order of Sale.

35.11.030 Sale of Real Property

When the proceeds of the sale of personal property and other funds of the estate have been exhausted, and the charges, expenses and claims against the estate have not all been satisfied, or when it appears to the satisfaction of the Court that it would be in the best interest of the heirs or beneficiaries that all or a part of the real property of the estate be sold for purposes of distribution, the personal representative shall petition the Court for authority to sell real property of the estate, or so much thereof as may be necessary for that purpose. If, in the Court's judgment, such sale is in the best interest of the estate, the Court shall order such sale and shall prescribe the terms upon which the real property shall be sold. If any such real property has been specifically devised, it may be exempt from the operation of the Order of Sale.

35.11.040 Sales Directed by Will

When property is directed by will to be sold, or authority is given under the will to sell property, the personal representative may sell any such property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court.

35.12 SETTLEMENT OF FINAL ACCOUNT, DETERMINATION OF HEIRSHIP

35.12.010 Final Account

When the affairs of an estate have been fully administered, the personal representative shall file a final account with the Court, verified by his oath. Such final account shall affirmatively set forth:

- (a) That all claims against the estate have been paid; or that all such claims have been paid, except as shown; and whether the estate has adequate unexpended and un-appropriated funds to full pay all such remaining claims;
- (b) The amount of money received and expended by the personal representative, from whom received and to whom paid, referring to the vouchers for each of such payments;
- (c) That there is nothing further to be done in the administration of the estate except as shown in the final account;
- (d) The remaining assets of the estate, including unexpended and un-appropriated money, at the time of filing the final account;
- (e) The proposed determination of heirs, indicating their names, ages, addresses and relationship to the decedent and the proposed distributive share and value thereof each heir or beneficiary is to receive.

(f) A petition that the Court set a day and hour for conducting a hearing to approve the final account, to determine the heirs and beneficiaries of the decedent and the distributive share each is to receive.

35.12.020 Order Setting Time for Hearing to Approve Final Account and to Determine Distribution of the Estate

Upon filing the final account, the Court shall enter an order setting a day and hour for hearing objections, if any there be, to the approval of the personal representative's final account on file with the Court, or to the proposed determination of heirs and beneficiaries and the distributive share each is to receive, as set forth in the final account.

35.12.030 Notice of Hearing Final Account and to Determine the Distribution of the Estate

The personal representative shall send by certified mail, return receipt requested, a true copy of such order and the final account, certified to as such by the personal representative, to each heir and beneficiary of the decedent at their last known addresses, so far as are known to the personal representative. On or before the time set for such hearing, the personal representative shall file his affidavit with the Court, indicating compliance with this requirement of giving this notice.

35.12.040 Objections to Final Account and Determination of Estate Distribution

On or before the time set for such hearing, any heir or beneficiary, or other person having an interest in the distribution of the estate, may file an objection to the final account, or to the proposed determination of the heirs and beneficiaries, or to the proposed distributive share each is to receive, specifying the particulars of such objections with reasonable certainty. The Court shall consider all evidence relevant to the objection and shall determine the controversy with reference thereto.

35.12.050 Order Allowing Final Account and Order of Distribution

(a) Upon concluding the hearing upon the final account, the determination of heirs and beneficiaries, and the distributive share of the remaining assets of the estate which each is to receive, the Court shall enter an order:

(i) Allowing the final account, either in whole or in part, as may be just and proper; and directing the personal representative to appropriate and expend funds to pay those unpaid claims, charges or allowances against the estate as shown in the final account which have been approved;

(ii) Determining the decedent's heirs and beneficiaries, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each is to receive;

(iii) Directing the personal representative to distribute such distributive share or shares to the heirs or beneficiaries entitled thereto.

(b) If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged by the personal representative and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree. The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto.

#### 35.12.060 Distributions to Minors

When a decree of distribution orders distribution of an estate or interest therein to a person under the age of eighteen years, it shall be required that:

(a) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository; or

(b) A general guardian shall be appointed and the money or property shall be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

### 35.13 CLOSING ESTATE

#### 35.13.010 Petition to Close Estate

At such time as the estate is ready to be closed, the personal representative shall petition the Court for an order closing the estate, discharging the personal representative, and his bondsman, if any. Such petition shall be accompanied by vouchers for any sums paid since the order approving the final account and by a signed receipt for distributive share from each of the distributees named in the order of distribution.

#### 35.13.020 Order Closing Estate

Upon finding that the estate has been fully administered and is in a condition to be closed, the Court shall enter an order closing the estate and discharging the personal representative and his bondsman, if any.

#### 35.13.030 Report by Personal Representative

If an order closing the estate has not been entered by the end of nine months following the month in which the personal representative was appointed, the personal representative

shall file a written report with the Court stating the reasons, if any there be, why the estate has not been closed.

## **CHAPTER XVI - SIMULTANEOUS DEATH ACT**

### 35.14.010 Simultaneous Death Defined

For the purposes of this Title, two individuals shall be deemed to have died simultaneously unless it is established that one of the individuals survived the other individual by at least one hundred twenty hours.

### 35.14.020 Devolution of Property in Case of Simultaneous Death

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Chapter.

### 35.14.030 Procedure when Beneficiaries Die Simultaneously

Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries.

### 35.14.040 Joint Tenants – Simultaneous Death

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

### 35.14.050 Exceptions

This chapter does not apply if:

- (a) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case; or
- (b) The governing instrument expressly indicates that an individual is not required to

survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period.

**CHAPTER XV - INHERITANCE RIGHTS OF SLAYER**

35.15.010 Slayer Not to Benefit from Death

(a) No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the decedent’s will, under any agreement made with the decedent, or under any other provisions of this Title.

(b) For purposes of this Section “slayer” shall mean any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person.

(c) The record of his conviction of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

**Certification**

I certify that the above Probate Code was adopted as Title 35 at a regular meeting of the Nisqually Tribal Council held on the \_\_\_\_ day of \_\_\_\_\_, 2011 at the Nisqually Tribal Center, at which time a quorum was present and voting \_\_\_\_\_ FOR \_\_\_\_\_ AGAINST \_\_\_\_\_ ABSTENTIONS.

ATTEST:

\_\_\_\_\_  
Cynthia Iyall, Chairman  
Nisqually Indian Tribe

\_\_\_\_\_  
Jean Sanders, Secretary  
Nisqually Indian Tribe